

REMARKS

This paper is filed in response to the second Office Action, which was a final rejection. The proposed amendments are provided solely to place the claims in condition for prompt allowance.

Claims 8-9 were allowed. In reviewing claim 8, the undersigned noticed a minor error in that there was an inadvertent period (in the line 11) instead of a semi-colon; this typographical error has been rectified herein.

Claim 4-5 and 7 were indicated as being allowable if rewritten in independent form. To this end, prior dependent claim 4 has been written into independent form by including the limitations of canceled claims 1 and 3; likewise, prior dependent claim 7 has been written into independent form separately, also by including the limitations of canceled claims 1 and 3. Claim 2 has been rewritten to change its dependency to claim 4, which should now be allowable. Claim 6 has been rewritten to conform the language therein to claim 7, which should now be allowable.

Independent claim 10 has been rewritten and is now dependent from otherwise allowable claim 8.


Claims 2 and 4-10 are now in condition for allowance.

The rejection of claims 1-7 and 10 as anticipated by Groove et al., U.S. Patent No. 6,820,133 is noted but respectfully traversed. MPEP § 2131 provides that a "claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. ... 'The identical invention must be shown in as complete detail as contained in the ... claim.' The elements must be arranged as required by the claim." (citations omitted, emphasis supplied). This requirement was not met because the reference does not specifically teach "using an exponentially time-weighted average" of given network performance data to generate a value that predicts a file download time (claim 1) or "generating a value indicative of the file download time, wherein the value is a function of the time-weighted average of latency modified by a penalty factor that is a function of the time-weighted average of loss" (claim 10). Nevertheless, as this is a final rejection and allowable subject matter already is indicated, this paper is submitted to close prosecution at this time.

Reconsideration and favorable action in the form of a Notice of Allowance are respectfully requested in view of the above comments.

A Change of Correspondence Address is also included.

Respectfully submitted,



By:

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